

GRISSOM(E.)

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TRUE AND FALSE EXPERTS.

By EUGENE GRISSOM, M. D., LL. D.,

Superintendent, Insane Asylum of North Carolina, Raleigh.

TO WHICH IS APPENDED

A REJOINDER

TO

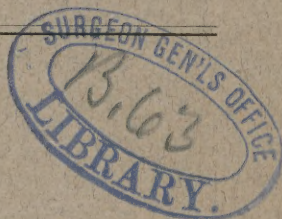
DR. HAMMOND'S "OPEN LETTER,"

WITH A

POSTSCRIPT.

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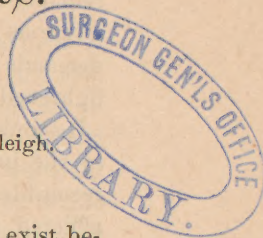
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True and False Experts.*

BY EUGENE GRISSOM, M. D., LL. D.,

Superintendent Insane Asylum for North Carolina, Raleigh.



The full recognition of the harmony that should exist between the claims of medical science and the demands of criminal law, is a social problem of the first magnitude.

Notwithstanding the rich and varied literature, the manifold discussions, the numerous trials with their accompanying forensic display, that enter into the history of the struggle to secure substantial justice for the insane, or to defeat the pretences of the wicked, the subject is yet of no less interest than importance. It is of interest as are all the questions that involve the study of mankind by man; it is of importance as upon the conclusions hang the lives of so many fellow-beings.

Although it has been so ably treated by members of this body, that their conclusions have modified the medical jurisprudence of more than one nation of the earth, the subject has yet a timely interest from the persistent efforts that have been made to turn back the hands upon the clock of time, and to return to ancient legal by-ways, long since abandoned for the open roads of scientific investigation established since the days of Coke and Blackstone.

In modern times, insanity has been the subject of legal investigation, when questions of capacity for the management of affairs, or the validity of wills, or of confinement to prevent injury to self or others were involved, but most frequently probably when offered as a bar to punishment by criminal prosecution.

It is the mutual relations of law and medicine in regard to

* Read before the Association of American Superintendents, Washington, D. C., May, 1878.

the plea of irresponsibility in criminal offenses, and the connection of expert testimony therewith, that we venture to examine at this time, under the conviction that whatever remains unsettled and doubtful in the law itself, whatever is injurious and misleading in the administration of justice, demands a speedy correction as soon as recognized by the enlightened sense of mankind.

It should be remembered that the physician must be the friend of the insane, and humanity demands that we consider and reconsider the fearful trust of the lives and reputations of the afflicted, until we shall be able in the fullness of time, to reach conclusions whose influence for practical good will sooner or later be acknowledged, and the jurisprudence of a coming generation adjust itself by an equity that shall have more of the divine element of Knowledge than the rude justice of the Past.

Chief Justice Shaw, in the case of Rogers,* defined the principles of expert testimony with clearness in the following language:

The rule of Law, on which this proof of the opinion of witnesses, who know nothing of the actual facts of the case is founded, is not peculiar to medical testimony, but is a general rule, applicable to all cases, where the question is one depending on skill and science, in any peculiar department. In general, it is the opinion of the jury which is to govern, and this is to be found upon the proof of the facts laid before them.

But some questions lie beyond the scope of the observation and experience of men in general, but are quite within the observation and experience of those whose peculiar pursuits and profession, have brought that class of facts frequently and habitually under their consideration. Shipmasters and seamen have peculiar means of acquiring knowledge and experience, in whatever relates to seamanship and nautical skill. When, therefore, a question arises in a court of justice upon that subject, and certain facts are proved by other witnesses, a shipmaster may be asked his opinion as to the character of such facts. The same is true, in regard to any question of science, because persons conversant with such science have peculiar means, from a larger and more exact observation, and long experience in such department of science, of drawing correct inferences from certain facts, either observed by themselves, or testified to by other witnesses.

* * * * *

It is upon this ground that the opinions of witnesses who have long been conversant with insanity in its various forms, and who have had the care and superintendence of insane persons, are received as competent evidence, even though they have not had opportunity to examine the particular patient, and observe the symptoms and indications of disease, at the time of its supposed existence.

*JOURNAL OF INSANITY, Vol. I, p. 270. Trial of Rogers for the murder of Lincoln. Worden (Mass.) Prison, 1844.

When such opinions come from persons of great experience, and in whose correctness and sobriety of judgment just confidence can be had, they are of great weight, and deserve the respectful consideration of a jury. One caution, in regard to this point, it is proper to add, the professional witnesses are not to judge of the credit of other witnesses, or of the truth of the facts testified to by them.

The attempt to follow the motives of a frightful deed of violence into the recesses of the mental structure of the man who has committed the act, and is arraigned at peril of life to answer for the outrage, is one of the most solemn of human inquiries. It is, indeed, a momentary search, as it were, for the gift of the Omniscient One, who alone reads the whole heart of man. It is a type of that day of judgment that Christian belief assigns as the most tragic scene in all the history of man.

No living man can entirely project himself into the consciousness of another. Whatsoever deals with human conduct must walk among mysteries. Some anomalies in human experience will forever wear the shroud of uncertainty. Whoso would track the labyrinth of the insane mind should have the light of experience for his feet, and the courage of a pure and honest heart.

There was a period in history, not so very remote, when the recognition of insanity as the result of physical disease had not dawned upon awakening humanity and civilization. What has been called the "modern refinement" of expert testimony was unknown, and the arbiters of science as well as law sat upon benches red with innocent blood.

There are those as we shall see, who would fain restore the good old days. It was but a hundred and twenty years ago, when Christendom witnessed the tortures of Robert Francois Damiens, who in a maniacal paroxysm, wounded Louis XV.* The merciful law burned his hand, tore his flesh with red-hot pincers, poured melted lead and sulphur into the wounds, and tore him apart with four horses, after many efforts, amid the jokes of the pitiful insane wretch.†

* JOURNAL OF INSANITY, Vol. III, p. 185.

† Fitzroy Helly, a counsellor of the English bar, has publicly declared in London, that the records of the Assizes show the execution of sixty persons during the present century, who are conceded to have been lunatics in the eye of the medical science of to-day.

We should not unduly censure the cruelty of an age in which the ignorance of the dependence of human conduct upon the physical condition of the brain was so dense and profound. Tribunals, after all, are without inspiration; they can only pronounce a judgment based upon the general assent of the most intelligent members of society; nothing more—and when that intelligence is vivified and immensely enlarged by the wonderful scientific advance which the world has witnessed, falsehoods hoary with time fall away, and truth after truth will assert its dominion at last.

Sir Vicary Gibbs,* Attorney General of England, declared, "I say this upon the authority of the first sages in this country, and of the established law in all times, which law has never been questioned, that although a man be incapable of conducting his own affairs, he may still be answerable for his criminal acts, *if he possess a mind capable of distinguishing right from wrong.*"

Dr. Bell, in speaking of the case of Bellingham, reminds us that under this very rule, "A man whom nobody now doubts to have been insane, committed his homicidal act on the 11th May, 1811, was tried, convicted, sentenced, executed, and his body placed on the dissecting table on the 18th; all within one week!"

Has America no addition to the sombre record? What of the condemnation of Cornell, whose sentence was commuted, that his insanity might convince the world, at Auburn; or Wilcox, also condemned and afterwards insane in Clinton Prison? What of the deaths upon the gallows, of Cook, at Schenectady; of Prescott, in New Hampshire; of Baker, in Kentucky; or of Maude, in New Jersey, a man who had actually been confined as a patient in an asylum, and escaped therefrom?

It is no wonder that as medical science convinced mankind that insanity was the result of disease, the nobler minds in the legal profession should demand the light of medical information in the midst of issues of such vast importance, in the effort to define such insanity as the law could admit, and to recognize its victims with the keen and trained faculties sharpened by scientific use.

* JOURNAL OF INSANITY, Vol. IV, p. 32.

The successive dogmas adopted to limit and bound so intangible an effect as insanity are a twice told tale to the profession, but it is noticeable that until within a recent period, there has been an earnest and continual endeavor to reconcile the claims of offended justice with those of an enlightened humanity, step by step, as the light of science leads the way, approximating justice and equity.

As early as thirty-three years ago, some manly and almost prophetic declarations were made by the presiding judge, in the case of Klein,* for murder, New York Court of Oyer and Terminer. His Honor said:

That it was by no means an easy matter to discover or define the line of demarkation where sanity ended and insanity began, and it very frequently occurred that a condition of mental aberration shaded off from a sound state of mind, so gradually and imperceptibly, that it was difficult for those most "expert" in the disease to detect or explain its beginning, extent or duration. And in this, as in other diseases of the human system, there was an infinite variety, so great indeed, as almost to justify the remark that no two cases were ever precisely alike. * * * *

The discoveries in the nature of the disease, and the improvements in the mode of its treatment, had been so great in modern times, that it had become almost a distinct department of medical science, to which some practitioners devoted themselves almost exclusively. The opinions of such persons, especially when to their knowledge they added the experience of personal care of the insane, could never be safely disregarded by courts and juries. * * * *

What is meant by "an insane person," is now, and long has been a matter of great difficulty. At one time it was held by the courts to be only such an overthrow of the intellect, that the afflicted person must "know no more than the brutes,"† to be exempt from responsibility. As science progressed, the rule has been extended in modern times, until it begins to comprehend within its saving influences, most of those, who by the visitation of disease are deprived of the power of self-government. Yet the law in its slow and cautious progress still lags far behind the advance of true knowledge. * *

If some controlling disease was in truth the acting power within him, which he could not resist, or if he had not a sufficient use of his reason to control the passions which prompted the act complained of, he is not responsible, but we must be sure not to be misled by a mere impulse of passion, an idle, frantic humor, or unaccountable mode of action, but inquire whether it is an absolute dispossession of the free and natural agency of the human mind. * * * *

In order then to constitute a crime, a man must have memory and intelligence to know that the act he is about to commit is wrong, to remember and understand that if he commits the act he will be subject to punishment, and reason and will to enable him to compare and choose between the supposed advantage or gratification to be obtained by the criminal act, and the immunity from punishment, which he will secure by abstaining from it.

* JOURNAL OF INSANITY, Vol. II, p. 262, Judge Edmonds.

† Judge Tracy, 1723.

If, on the other hand, he have not intelligence and capacity enough to have a criminal intent and purpose, and if his moral or intellectual powers are either so deficient that he has not sufficient will, conscience, or controlling mental power, or if through the overwhelming violence of mental disease, his intellectual power is for the time obliterated, he is not a responsible moral agent, and is not punishable for criminal acts.

In proportion as the public sense accepted the fact that insanity was to be attributed to disease, and not to a psychical possession akin to the notion of witchcraft, that, alike from the general mind, was reflected also in the language of the law, in annals that are painful to dwell upon; so did the conviction the more fully fasten upon the legal mind that the technical facts of insanity must be developed for the jury by a skilled understanding, and it became absolutely essential to call in the aid of medical experts. This process is still going on.

The following is from a review,* in the *AMERICAN JOURNAL OF INSANITY*, on a valuable "Report on the Medical Jurisprudence of Insanity," by Prof. Coventry:

Reforms of every kind are indeed slow in progress, not in being assented to in theory, but in being accepted and carried out. * * * The legal relations of insanity, and the responsibility for supposed crime are as uncertain and unsettled as in the time of Blackstone or Lord Coke. This is because so comparatively little of the great light shed upon the subject of mental disease, and its relations to human responsibility during the past century, has yet penetrated the popular understanding, and the dogmas and precedents of the courts. But though slow in their progress "reforms never go backwards."

While it will be acknowledged that some progress has been made since that period, and in a few States of the Union admirable changes effected in the modes of administration of the criminal law, the great truth yet remains of the lamentable need, over the country at large, for yet farther revision and readjustment of modes of proceeding with persons pleading insanity in bar of punishment for offenses. In a free and intelligent land, statutes will be enacted as an expression of deliberate public opinion. How important, therefore, that public opinion should be impressed by those whose lives are given to the practical study of insanity. Unpleasant as some aspects of the struggle may be, the physicians of the insane cannot do their whole duty if they permit the noisy charlatan to fill the

* *JOURNAL OF INSANITY*, Vol. XV, p. 420.

public ear with sensational falsehoods to please a mob athirst for something strange to feed upon; or even if they surrender this field to the theories of legal gentlemen, who, with admirable motives, have, by their very education and mental habits, become unfitted for the reception of truths discoverable in so experimental a science as medicine.

What the status of the expert in insanity in courts of law, and before that court of last resort, public opinion, has been, is now, and should be, though often discussed, may *still* claim our careful consideration, inasmuch as its final settlement involves so much to the profession directly, and more to humanity at large.

We may fairly assume, that in cases of criminal accusation, what men desire is substantial justice. The legal effect of an act, should, in absolute equity, depend upon its moral quality. But the moral quality can only be *approximately* judged, and that by our knowledge of the *natural history*, so to speak, of the act. Knowledge must necessarily be supplemental in part by *opinion*. And the least possible room is left for a doubtful quantity, when every avenue of knowledge has been explored with a competent guide.

The medical expert is in part a guide, as Dr. Reynolds has happily said, "he is one who knows *what* to look for, and *why* to search for it, as well as *what* to see."

I need not remind you that the most enlightened nations of the Continent have given large powers to medical experts. Thus, to avoid detail, we know that in France a preliminary step in the trial of the alleged insane is to submit him to the examination of a board of experts; and in Germany, medical experts are called upon to conduct an examination, in the presence of a judge, and their opinion must be rendered with a written statement of the whole investigation.

It is a familiar fact that the usual course of introduction of expert testimony in the courts, so far as insanity is concerned, is for the purpose of sustaining the position of counsel for the prosecution or the defense, as the case may be, with the strange anomaly of a witness announcing the conclusions of a most recondite science, and straightway being cross-examined concerning the same, as though to demonstrate his ignorance or

untruth, by a layman, presumed to be a stranger to the very science, of which the expert is supposed to have special knowledge. Nor is it altogether unknown, for the judge himself, after questions tending to intimate the unreality of medical knowledge to conclude with a charge to the jury, to stand by decisions whatever the consequences. And yet there was a period when the scientific world was as thoroughly convinced as to-day, that witchcraft was a monstrous delusion and still *stare decisis* from the lips of the great and good Sir Matthew Hale was the death knell of at least two poor women for sorcery.

We cannot censure the upright judge who knew not his own wrong, but what can we say of a school of latter day philosophers who look back reverently to his dicta upon insanity of which he was equally ignorant, and who would persuade civilization and humanity to retrace their footsteps to the darkness of the past, amid the spectres of the innocent condemned?

And yet such men live not only among the mistaken devotees of legal precedent, but as we shall see. men who hide the Mephistopheles behind the cloak of the philosopher, and diffusing a subtle moral poison even through the fountains of the great daily press, would drug a Christian people into moral insensibility and practical atheism.

The early history of the services of experts in insanity before American courts, is an honorable page in the literature of our profession. I need not remind you of the estimate humanity must accord to the labors of such men as Drs. Woodward, Bell,* Brigham, and others, who did so much to modify the expression of judicial opinion in regard to the proofs demanded to demonstrate the existence of insanity. I need not point you to the subsequent history of persons accused, especially in the trials as fully reported, occurring in the Eastern States, who were remanded to Insane Hospitals for care and treatment upon the evidence of these experts.

And yet with so much of human experience recorded in the annals of the law, in regard to the value of medical testimony, Lord Campbell, from his lofty judicial seat, could say to three learned and respected physicians, "You may go home to your

* Memoir of Dr. Bell, JOURNAL OF INSANITY, Vol. XI, p. 114.

patients and be more usefully employed there than you have been here." This, it will be remembered, was in the Bainbridge Will Case.

And it is another of the legal anomalies remaining that in a number of States of this Union, to the present day, the testimony of non-experts* as to the mental condition of a prisoner is duly taken, if based upon personal observation. It is not matter of surprise that extraordinary results sometimes follow. The United States Courts permit the same.

Let us note, that here at least, the rule should be modified, by which only the declaration of such acknowledged and notorious phenomena of insanity as are accepted without question, with duly corroborating circumstances, should be received from such witnesses. Should not the force of such testimony be greatly restricted where there is appearance of doubt in the case, and should not its recognition by experts be demanded in such instance?

In the comments on the case of Davenport,† for the murder of Wilson, Bennington, Vt., 1863, it is stated that the Court ruled "that medical witnesses can only be asked what certain facts admitted or supposed, *tend* to prove in respect to the mental condition of an accused party." But as the writer well says:

Neither substantial facts nor logical definitions can always describe a case of mental disease. As the opinion of an artist upon the genuineness of a picture, and that of a ship-builder upon the sea-worthiness of a ship are lawfully taken because no scientific test is possible, so the judgment of an expert in mental diseases should be freely admitted.

It was by slow degrees that the position of the medical expert came to be accurately apprehended, and development in this direction as we shall observe, is yet demanded by the justice that shall approach nearest the sublime equity of our Maker.

The *London Medical Gazette* (Nov. 28, 1851,) relates that:

An application was made to the Lord Chancellor, last week, for the payment out of a lunatic's estate of a fee of fifty guineas to Dr. F. Winslow, for his examination and report on the condition of a lunatic. In refusing the application, the Lord Chancellor remarked—that in the present instance, as was likewise almost the invariable practice, the medical man had reported in favor of the views of those parties which had employed him.

*Dewitt vs. Baily and Schoonmaker (3 Smith, 340.)

† JOURNAL OF INSANITY, Vol. XX, p. 413.

In regard to the basis of evidence properly receivable as such from the expert, we find in Beck's Medical Jurisprudence, that the medical witness is cautioned:

First. That his opinion must be based on the medical facts of the case. "It is not the province of the expert to draw inferences of fact from the evidence, but to give his opinion on a known or hypothetical state of facts."

Second. Physicians are not allowed to give their opinions on the case as submitted to the jury.

Third. Medical men are not usually allowed to quote the books of authority in their profession to fortify the opinions they have given in the case.

The principle assigned by the bar to explain this exclusion of medical literature is, that nothing is evidence which is not sworn to. But it has been well remarked that much enters into a case that is not sworn to. Lawyers do not scruple to refer to medical works, and seek to entangle the expert amid seeming contradictions by questions intended to develop antagonistic views on the part of the expert, to one or other leading authority upon insanity in regard to the nomenclature and the scientific appointment of language to define the various grades of mental alienation. Judges themselves not infrequently quote medical writers from the bench in the charge to the jury, in opposition it may be to the views of the expert, while denying him the advantage of the precision of language employed by authors, to represent fairly his own views, to say nothing of the charm of the printed word and the ponderous volume upon the mind of the average jurymen.

In the case of the Queen vs. Frances, in London, 1849, Baron Alderson refused to allow a medical gentleman present in court, who had heard all the evidence, to testify to his opinion of the soundness of mind of the accused. He said: "The proper mode is to ask what are the symptoms of insanity, or to take particular facts and assuming them to be true, to ask whether they indicate insanity on the part of the prisoner." Otherwise, it is really, he said, to substitute the witness for the jury.

Sixteen years later we find the following opinion from the bench, in the charge of Judge Mellor,* in the case of Regina vs. Southey for the killing of his wife and child, 1865. The defense being insanity, and many facts having been sworn to, the Judge charged:

* JOURNAL OF INSANITY, Vol. XXIII, p. 394.

That every man was presumed to be sane until the contrary was shown, that the jury must not give themselves up to the medical testimony, but must exercise their common sense and judgment upon it. Some medical men had theories upon insanity, which if applied generally, would be fatal to society. The opinion of persons who had observed a man for months, was worth far more than that of those who went to see him once, for the very purpose of giving evidence that he was insane. It was not enough that some amount of insanity was shown. It must appear that the prisoner did not know that he was doing wrong.

The natural conclusion perhaps followed this charge. The Judge succeeded as an advocate, and the accused was sentenced to death.

So also, as the writer to whom we have just referred reports, in *Regina vs. Leigh*, before Chief Justice Earle for the murder of Harriet Harton, February, 1866, the Judge charged:

The question was, whether he was or was not responsible when he committed the act—not whether he was *not* guilty, on the ground of insanity, that was an issue far too vague. * * * * The law, however, did not say that when any degree of insanity existed, the party was not responsible, but that when he was in a state of mind to know the distinction between *right* and *wrong*, and the nature of the act he committed, he was responsible.

In striking contrast to these expressions, hear the voice of the lamented Griesinger, speaking of what some call partial insanity, “At what limits must it be said that a man is blind? Is it only when he can no longer perceive a ray of light?”

The unfortunate disposition to regard medical men as governed by false sentiment, or imaginative fancies, at war with the best interests of society, may often be observed. So far has this feeling been manifested as to lead to the most fallacious reasoning, to the discredit of the bench. Thus, before the Judicial Society, we find Baron Bramwell declaring (December, 1857,) that:

The question to be discussed was not the relative amount of pity which we should feel for the sane or the insane, but how is the law to deal with the commission of an act which it prohibits? To solve this question, it is necessary to go back to the true theory of punishment, which is, that pain being in itself an evil, society has no right to inflict it upon an individual except for the purpose of preventing crime, by the *fear* of it on the individual punished, and by the *spectacle* of it on the rest of the community. The certainty,

therefore, with which punishment follows crime is of the last importance in teaching men to respect the law, and to obtain from breaking it; for since the law threatens all mankind, it would be a mere *brutum fulmen*, if it did not also punish those who violate it. The madman, amongst others, is threatened by the law, why then should he escape if he infringes the law; and why destroy that certainty of punishment following crime which is the very essence of its preventive power? For his part, he could conceive an argument being maintained to show that even idiots should be punished when they break the law; but in such an opinion, if held by any one, he did not share. If you do not punish the madman, you hold out a premium to the commission of crime; for every man would calculate that he would be fortunate enough to escape by some one proving that he was mad, on the same principle as that on which people lead a forlorn hope, or put into a lottery, not calculating the chances against them, but trusting that they will be the fortunate ones to survive, or to win the prize.

Of such tenets held by the learned Judge, it was well remarked:

That the legal profession generally, and especially the judges, have so little practical acquaintance with insanity, that their minds are absolutely unable to comprehend vast truths which are familiar enough to medical men. Examinations in courts of justice are peculiarly unfavorable to the diffusion of just ideas on these matters, and the medical witness consequently gives his testimony amidst an amount of prejudice, arising from ignorance, which is too often fatal to the best interests of humanity and justice.

The natural responsibility of the position of a medical expert is *heightened* by the imperfect systems existing, whereby the physician is often hurriedly called to give an opinion based upon miscellaneous facts, gathered by laymen, with slight opportunity for observation of the accused, with the forlorn hope that he may confirm or refute a plea, offered at the last moment, or during the very progress of the trial for the first time. Surely this procedure is unworthy of that degree of civilization which our country has reached. If, as we know, one or two States have sought out a better way, it is time that the efforts of physicians, who have the especial charge of the insane, should arouse public sentiment to the urgent need of progress throughout our entire country.

It has been well said by Dr. Chipley,* in speaking of the medical witness:

It is an embarrassing position, not willingly assumed by intelligent medical men. In fact, it is a matter of notoriety that physicians avoid a summons in such cases by every means in their power; when they would not shrink from the discharge of their duty, if allowed an opportunity to analyze the case as they are daily doing in regard to other diseases.

*JOURNAL OF INSANITY, Vol. XVII, p. 302.

They are required to pronounce an opinion which may involve the life of the prisoner on the one hand, or interfere with the just administration of the law on the other, on data, which in ordinary practice, would not authorize a diagnosis in any case of disease, or justify the administration of the simplest remedies.

But whatever may be the difficulties that surround us, it is unhesitatingly our duty to apply such powers as we possess to the solution of the question presented. We dare not turn our backs to this appeal, because the dearest interests of the insane are involved on the one hand, and the sacred bulwarks that encircle society lie exposed to outrage on the other. How shall we gird our loins for the task?

First, since, *when* the true mental attitude of the expert is understood, he will be really recognized as upon the one issue, a virtual judge, we should cultivate a calm and impartial frame of mind, in addressing ourselves to the inquiry before us. This is a duty, the importance and solemnity of which it is impossible to exaggerate. The expert should follow neither in the train of the prosecution or the defense. Too long has science, bearing the rich fruits of experience and skill, been dragged as a slavish trophy behind the conqueror's chariot in the legal struggle.

We should demand the enactment of statutes remanding to a commission of experts the examination of the accused, that the plea of lunacy may be disposed of, when presented, before issue is joined or trial begun. Compensation for this service should be made by the State only. And it may well be claimed that the observation of the commission should extend through such a period of residence in an insane hospital, as will supply ample data for exact conclusions. To this might be wisely added, the visits and observations of a physician especially sent by the defense to co-operate with the commission.

But while we are waiting to secure the passage of laws retaining the valuable features of the statutes of New York or of Maine, the medical expert can at least frankly assure the counsel, in the case of hurried consultations, that he must testify from a knowledge of all the facts attainable, and that if important facts are developed, previously withheld from him, that his views must be readjusted to the whole truth. Indeed, we should labor to place the expert in the position of *amicus curiæ*.

I need not remind you with what care we should seek the history of the accused, what has been his parentage, education, and physical habits, whether there has been recognized any great physical or moral change in the man; and if so, whether sudden or gradual, what is his organic condition, and whether trophic degeneration of any character is discoverable, whether hereditary influences indicate hysteria, chorea, epilepsy, syphilitic diathesis, or other profound disturbance of the nerve centers; what inconsistencies of opinion are in sharp contrast with his usual course of belief, whether there is inordinate grandeur attributed to his personal abilities or interests, whether the bodily functions are performed with regularity, and he enjoys natural sleep, and whether there is that due accord of mental and physical manifestations which long experience has shown to be in appropriate relation to each other in the several forms by which insanity has been recognized, and by which there have been efforts at its classification. We are to avoid the substitution of names for realities. "Test every case by its symptoms," is the very axiom to be dwelt upon by the medical mind. This is abhorrent to the legal profession who can not understand the belief of the physician, that within certain limits every case is a law unto itself.

One of the primary demands, therefore, on the witness-stand, is a classification from the expert, of the forms of insanity, and nosological distinctions once obtained, the forensic struggle is made to show that the expert has failed when drawing his lines, "to divide a hair twixt south and south-west side," or to triumphantly show that the accused may not belong to the special division, in which with some reservation, the expert may have unwarily assigned him.

It would not be profitable here to enter into the long standing questions concerning the forms of insanity, nor can it be conceived that it is the special province of the expert to enter into such dissertations before a jury, any more, than if a surgeon were asked concerning the existence of disease of the heart of a certain character or of locomotor ataxy, it would be proper to enter into obscure theories of causation. It is enough that he can affirm the existence of a prolonged departure from ordinary human conduct, whether it appear to his mind to be

primarily due to intellectual aberration, or to the deprivation of natural affections and emotions, or to inability to use the will in accordance with the dictates of the intellect and the control of the moral sentiments, or to impairment of the mutual counter-play of all those powers of the mind.

Is it not true that we are to fix our minds upon results, to look narrowly for physical symptoms of physical changes, whether those changes proceed from what may be commonly termed moral causes, or otherwise? The existence of the insane condition is the fact in question, and not what authors, or physicians, or lawyers, may have fancied to constitute ideal insanity, but the insanity of the individual under investigation—that exceptional condition which marks him as an unfit person upon whom to inflict the penalties designed for actions involving the conscious and willful violation of the rights of others.

Whether, indeed, we may believe with Dr. Gray and many other distinguished alienists, that no case of moral imbecility exists without some deprivation of intellect and reason, whether immediately observable or not; whether we are ready to accept the conclusion of our honored President, Dr. Nichols, whose eminent services to the insane were rendered for a quarter of a century in this Capital of our country, when he says: "It is evident to my mind that cases of insanity have run on for years, under the observation of competent men, without the discovery of any intellectual lesion whatever;" whether we may agree with the late lamented Dr. Landor, in more extensive views, when he says:

Daily experience shows abundantly that a man or woman may be imbecile morally, from cerebral disorder or disease, and yet have great intellectual or even high logical powers. There are many who being thus diseased mentally, drink to drunkenness, are lascivious, lie, steal, are obscene, homicidal and malicious, in spite of a knowledge of right and wrong, and even with reasoning powers little or at all affected, and whatever the law may decide, the inexorable logic of facts will hold its own."

Or whether again we accept the views of Dr. Walker, who declares that, "when the will is overborne, the intellect is disturbed. You may call it 'impairment,' 'disturbance,' 'excitement,' or what not, when the will is gone, the individual is gone;" we say, that whether our belief coincides with any of these, is, after all, not of such transcendent importance in a

practical point of view, not at least to the extent that such divergences of belief are pictured in the psychology of the gentlemen of the bar.

It will surely be conceded that the typical examples alleged, of emotional insanity, leave at least a strong suspicion of latent weakness in primary or purely intellectual cerebration, often confirmed by the later history of absolute delusion with mania and resultant dementia. On the contrary, it will hardly be disputed, that in general paresis there may be a prolonged early stage, in which, while the emotions and feelings that elevate man above the brute, seem palsied and destroyed; yet bodily vigor is great and the reason apparently acute. And still again, it may not be easy to show, *a priori*, that the mental dynamic force which we denominate the will, may not be irresistibly set in action by the consentaneous work of passions, with or without the cognition of the dictates of reason.

So that to wander at all into psychology is, for the expert, an abandonment of the safe middle-ground, from which he pronounces an individual sane or insane, from the judgment derived by his experience, from physical indications, and well ascertained history, and yet again from a *recognition*, which long familiarity with the insane may give, but which can no more be formulated in identifying dicta, for cross-examination, than we can explain the recognition of an animal or any article of daily use among many similar thereto, without a possibility of defining that which makes it different to us, by accurate description.

Prof. Meyer,* of Gottingen, has well said, in connection with the identification of insanity, that:

To judge this affection, the physician is satisfied with a series of symptoms, which his experience has taught him to consider characteristic of insanity, in their mutual relation, in their connection, without his being able to give a sharp definition of the number and meaning of symptoms.

The law takes insanity, or the irresponsibility dependent upon it, as being proved only when the result or the manner of thinking is entirely abnormal; when lively illusions are indicated, and the condition is one of complete confusion. The accused therefore will suffer the penalty of the law, if his thoughts do not differ from the common run, if he talks with tolerable coherence, if he knows his way of action to be criminal and deserving of punishment. Yet it is a fact to be proved, even by laymen, that many of the in-

*JOURNAL OF INSANITY, Vol. XXVII, p. 419.

mates of our asylums, when subjected to the same ordeal, would be perfectly responsible persons within the meaning of the law.

He points out with clearness, the often in that first onset of mania, the intellect still powerful, struggles with the morbid influence, and thus the mental conflict ensues, which to the world seems the height of madness, but in its onward progress, and with the intellect breaking down in anticipation of approaching dementia, and under such remedies as may serve to calm physical agitation, an appearance of coherence is again restored, and there is a simulation of action of a truly intellectual character. But this, he affirms is unreal—the fact is that these actions are more or less automatic of previous manifestations, and are not the outgrowth of original thought or of determination guided by a will influenced normally by the intellect. There is no power of originating. He says:

The whole doctrine of morals and ethics, the tenets of the Christian catechism may be found with the insane in their accustomed connection, like the stamp of an ancient coinage, but their ideas are not the product of thinking; their actions not the effect of free will; they are mixed at times with delusions, but reproductions from their former mental lives.

Whether we assent entirely to these propositions, they contain matter of reflection.

If we may be pardoned for digression to a subject too vast for consideration in a paper like this, may we not fairly suggest in leaving this topic, that less stress upon names and divisions, less warmth of adherence to favorite authorities, and a more thoroughly catholic disposition of mind, and courteous acceptance of non-essentials, by medical experts, who may equally recognize the presence of insanity, but by different lines of belief, may tend to good, by its impression upon the bar, the bench and public opinion; that, after all, the facts are too solemn, and demand too much sincerity and earnestness of mind, to allow room for speculations upon the particular channel by which they occur.

Yet the medical expert cannot be guiltless if he fail to acquaint himself with the revelations of the most advanced thinkers and laborers of the profession. Would any toxicologist of the present day be justified in appealing to the rude tests of a hundred, nay, of fifty years ago, in regard to the detection of

poisons? Have we not seen what will become of such mistakes? Chemical science grows and its growth is formally accepted and acted upon by the courts. Why not medical science too, and that most exquisite branch which weighs in imponderable scales the capacity of a fellow creature to fulfill the demands of society.

One of the singular anomalies of criminal procedure, is the denial of the right of the expert to express an opinion in the hearing of the jury upon the facts as proved before the court. But the counsel upon either side may frame hypothetical questions, containing as many half-truths as possible, only with phases reversed, omitting what they please, and perhaps, joining inference and implication to actual evidence, and may demand a categorical answer, which may require *Yes* and *No* to be said of the same individual, with a cross-examination to follow, the whole to be concluded by an appeal to the jury to perform the mental acrobatic feat with safety, of resting their conclusions upon whatever they may gather from each side that bears the semblance of certainty.

It is to be regarded as fortunate that there is now a disposition on the part of some judges to permit the expert to declare his opinion, from the entire burden of the testimony. It is at least an advance, when facts and not fiction form the basis of opinion.

It must be remembered that the opinion of an expert who is truly such, is more than a dictum—it approaches the dignity of a judgment, so far as the particular plea of insanity is concerned. True, there should be great caution that the witness is truly qualified. That he be a physician is not enough, for not all physicians are experts in every branch of medicine. That he has had opportunities for observing insanity is not sufficient, for such opportunities may not have been improved. In *Page vs. Parler*, N. H. Reports, 59,* the Court well said that it must be shown “at least that they have superior *actual* skill or scientific knowledge, in relation to the question, before their opinions can be competent.”

But when fairly acknowledged and respected as an expert in insanity, what, after all, is the *opinion* of the alienist, so

* Quoted in *Journal of Nervous and Mental Diseases*, July, 1877, p. 478.

objected to? It is a declaration of what he esteems a central fact, appealing to his consciousness for an existence, because of the union of analogies from many minor facts. These can be taken as a whole, and weighed at once by the educated mental grasp of the expert, but can not be apprehended by a mind unfitted to gather and associate the many elements of one truth.

What is the universally accepted fact of the law of gravity but an expression of acquiescence in the scientific opinion of Newton, that only in that manner could the many motions of natural objects be susceptible of explanation?

A shipbuilder may declare that a bolt of a certain size is weak, that a beam of a certain character is unsound, that construction upon such and such lines is faulty, but it is from his knowledge intimate and accurate of the bearing of all such facts, taken together to constitute another and the central one, that he boldly affirms the unseaworthiness of a vessel.

If it be asserted that another builder is of a different opinion, it becomes a question of the weight of their several testimonies, and preponderating experience must govern; but surely, not the crude views of a jury, composed perhaps of men, who may have no knowledge whatever concerning the architecture of a ship.

But if we have justly portrayed the strength and the profound moral dignity accompanying the careful declaration of an expert, after cautious investigation, where human life and high honorable repute hang in the balance, what language can characterize the rash intruder who plays with such fearful issues without knowledge, or the trafficker in human misery who sells his opinions for gold?

In olden time only the vestals robed in perpetual purity could keep alive the sacred fires, and profanation of their vows was punished by burial alive. What burial of public contempt could be too deep for the man who should prostitute science in the market, and smother her pure light under his greed for pelf? Such a man would be the Benedict Arnold of his profession—such a man, we say it reverently, would be a Judas Iscariot to humanity, selling the blood of her children for thirty pieces of silver.

Is it true that the former honorable record of testimony has

been recently darkened by the conduct of men more wicked than the victims whom they judged, bringing unmerited disgrace upon real alienists, and holding up the just claims of medical skill to the scorn of mankind? Difficult as it is to credit such depth of ignominy, we are told by the Managers of the New York State Lunatic Asylum, in a report not many years ago:

It may not be amiss to observe that this matter of the testimony of experts, especially in cases of alleged insanity, has gone to such an extravagance that it has really become of late years a profitable profession to be an expert witness, at the command of any party, and ready for any party for a sufficient and often an exorbitant fee; thus destroying the real value of the testimony of unbiased experts. Vaunted and venal expertness is usually worthless evidence; and yet such testimony is getting to be in great demand.

We denominate him a criminal who counterfeits the coin of his country, or who adulterates the food of the people. What shall be said of the poisoner of the fountains of justice? The world hangs upon eloquent lips like those of a Curran or a Grattan that denounce the baseness of an informer who testifies against the guilty comrade to save his own unworthy life. But what language can fitly fasten that man in the pillory of universal execration, who has bartered innocent blood over which the law gave him fearful power, at the bidding of jealous envies, and the lust of gold? Such a man, if he exist, must have denied his God in impious atheism, else there were no refuge from remorse save in madness, that dread sanctuary which he has denied his wretched victims!

The case of David Montgomery* who killed his wife, while suffering from epileptic mania, is alas, yet fresh in your minds, and the admirable review of the expert testimony by Dr. Echeverria, than whom no man stands higher as an authority upon epilepsy in this country.

On that trial a physician called to enlighten and instruct as an expert, asserted that, "it by no means follows that an individual suffering from epilepsy is not as fully responsible for his actions as healthy persons." And again on being questioned he declared "that not many cases of epilepsy are accompanied with insanity or obvious mental deterioration." Yet again he answers that, "according to his experience, fifty per

* JOURNAL OF INSANITY, Vol. XXIX, p. 347.

cent. develop mental deterioration." Little importance, he said, should be attached to the views of asylum physicians, on the subject of the responsibility of epileptics, because the epileptics in lunatic asylums are at the same time insane.

He makes the surprising assertion that insanity *with* epilepsy, is a very different thing from the insanity which results *from* epilepsy. Whereas every one knows that epilepsy precedes the insanity, it being exceedingly rarely noted, if ever, that epilepsy is developed after or from the insanity.

This very person gave the evidence upon which Reynolds was executed, although the poor wretch had an epileptic paroxysm on the day of the homicide. Too late was the world horrified at the direct physical evidence of brain degeneration in this cruel case. Yet the supposed expert has handed the helpless accused over to the hangman, at the demand of the populace thirsting for blood.

To stamp with additional infamy, the whole transaction, there was another so-called expert, who agreed and consented unto the death of Reynolds upon the gallows as a guilty man, yet who, on being asked when McFarland was tried for the killing of Richardson, to describe a case in which insanity could exist without delusion, replied to the district attorney: "Take the case of Reynolds.* There was no delusion there; the man acted as a mere machine having no consciousness of his act, and when he comes to himself he has no recollection of what he may have done." Why did not the recollection that he had declared the insane epileptic a free agent and delivered him to the hangman, rise within his soul, and drive him from the court-room with shame? But no, alike with his partner in such science, they are now there at the command of the opposite side, and have changed their views of insanity.

But to return to the man who has done so much to debauch the course of justice, the records of the court in the case of Montgomery show contradictions most violent in answering the prosecution, and again the cross-examination by the defense—separated by a single night and an interview with the interested counsel.

* JOURNAL OF INSANITY, Vol. XXIV, p. 274.

He delivered the following dicta, as expressions of scientific truth, the falsity of which has been shown by Echeverria, beyond possibility of contradiction:

That patients committing acts of violence during epileptic mania, have apparently no motive unless it is a false one.

That he has never known a case of an epileptic fit or seizure, where during the continuation of it, the party will be spoken to, will answer, and then relapse into the same condition, and being spoken to again, will answer and relapse again.

That deliberation takes away the idea of an insane act.

In temporary insanity from cerebral disturbance there is no disposition to resist the impulse, the person yields to it and strikes.

When an epileptic has suffered from an attack, the mental disturbance continues frequently several days.

This medley of contradictions prevailed to convict Montgomery. Although evidence was abundantly exhibited that Montgomery had paroxysms of epilepsy throughout the week before the homicide, and according to this expert himself, his delusions were the result of epilepsy, yet the opinion declared was, "the circumstances of the affair are irreconcilable with the theory that the homicide was perpetrated during a paroxysm or an accession of epileptic mania."

"Deliberation takes away the idea of an insane act." This silly and ignorant pomposity, which any alienist would receive with a quiet smile of contempt, was a declaration sealing Montgomery's conviction—for had he not confessed that he stood five minutes over his sleeping wife before he struck her, and then stooped to kiss her.

What then shall be said, when this very expert, with heart of iron and forehead of brass, affirmed when testifying for the defense in the McFarland trial, and on the cross-examination, by the district attorney, that "the insane are very persistent in their revenge. I have known insane men occupied with the idea of killing their keeper for years, and finally do it." It will be remembered that the point of the application of this view, was that two witnesses had testified that McFarland had waited ten minutes in the *Tribune* office, behind the partition, looking for Richardson to appear, upon which he fired.

The distinguished author from whom we have quoted, well says:

If such assertions are to prevail, if insanity, whether it be of an epileptic, or any other nature, must preclude every attempt at design or premedita-

tion, we may as well reject every other principle equally confirmed by every day's observation of the insane, and by the numerous examples cited in the annals of insanity and medical jurisprudence in this country and abroad.

Again, in order to convict Montgomery, this false expert declares, "when an epileptic has suffered from an attack, the mental disturbance continues, frequently several days."

But that Reynolds might not escape, he had affirmed on that trial the opposite opinion. "The disease (epileptic mania) is of remarkably short duration. There is not a case on record where it has lasted fifteen minutes." So that on the strength of one opinion the latter was actually executed, and upon its opposite, the former was condemned, but by the merciful interposition of the governor his life was spared. I need not remind you that he was placed in an asylum for the insane, and his life has demonstrated the correctness of such competent alienists as Drs. Gray, Cleveland, Ordranax and others, when they pronounced him insane.

It must be that a man so lost to conscience and honor, as to inflict almost irreparable damage upon the science of medical observation, must have speedily fallen into obscurity—powerless for farther evil. On the contrary, he publishes books, which are accepted in the medical world by a large and admiring clientage; books in which he walks among cases of rare affections as numerous as the soldiery of an army, and yet diagnoses with unerring certainty as with the magical wand of a Heller or a Wyman. He is the honored member of numerous medical societies, the Magnus Apollo of such as the Neurological Society of the metropolis of this country, and a Professor of Diseases of the Mind, in a most respectable university. He has the great dailies of the country under his command, and has waxed great, until he now appears as the philosopher who is to inaugurate social improvements, the medicolegal jurist, who will re-adjust criminal law, and relegate insanity from the list of misfortunes to appear in the catalogue of crimes. The alienists who are superintendents of the insane standing in the way of this giant, to whom Christianity itself, with all the pestilent theories of humanity is but a myth, are to be reformed out of existence, and the institutions administered under the new lights of such modern philosophy.

What indeed are the restraints upon moral action, which to other men are sacred, to him who declares that, "whenever there is grey nervous tissue in action, there is mind also," and that, "of the mental faculties, perception and volition are seated in the spinal cord as well as in the cerebral ganglia;"* who asserts that there are two forces resulting from vitality—mind and animal electricity—who affirms that the brain secretes mind as the liver does bile.†

Dr. Parsons has happily replied that the whole question turns upon what is mind. True, indeed, if the motions of a decapitated frog prove the existence of mind in his backbone, why not allow its possession to all animated nature, to the amœba that feeds itself, to the endosmotic action in the life of plants? Why stop with the grey matter only, in man? Why draw lines between mind and matter at all?

How shallow is such latter day philosophy after all, when confronted with the facts of consciousness and the great phenomena of the world's history.

Strange that a man who contemptuously rejects the fact of any miraculous occurrence in the history of religion, and to whom, therefore, the Scriptures are a fable; who says that "science is truth," "religion" but faith in the truth, and, therefore, beneath the eternal verity of science, and who arrogantly denominates the belief which would give to the mind an existence independent of the nervous system, a "mere metaphysical and theological dogma;" strange, we say, that of all men, he has the presumption to teach reforms in the reconstruction of the criminal law, to secure safety to the morals of society, which his own doctrines would reduce to theological dreams. For if mind and bile are congeners, and man's spirituality is a fiction, what is morality after all?

Yet this man has a code, so rigid, that scarcely may it be said that he would suffer a maniac to live. In his "Insanity in its Relation to Crime," he compares the insane man who has committed homicide to the wild beast, and the mad dog. The idea of justice in human law, is utterly ignored. He says: "What

*"The Brain not the Sole Organ of the Mind." Hammond in *Journal of Mental Diseases*, January, 1876, p. 10.

†Spiritualism and Allied Cases, &c., of Nervous Derangement, Hammond.

society requires is protection, and it has no more business as such with abstract justice, than it has with any other bit of philosophy."

The safety of society is the only thing, he argues, to be considered in the formation of the law, or in the punishment of the offender. He demands the punishment of the insane homicide, and cites as parallel cases the operation of the law of attainder, and the penalties inflicted for ignorant violation of law, seemingly unaware that the first is regarded as a hateful relic of the dark ages now obsolete, and the ignorant man might have informed himself, but that the insane is bound in pathological fetters, and is the helpless prisoner of misfortune. Such is his language:

Looking at the matter therefore, from a similar point of view, no valid argument can be adduced against the punishment of the insane, even though they be morally irresponsible for their acts, by reason of delirium, dementia, morbid impulse, emotional insanity, or any other form of mental aberration.

To such wild assumptions, may we answer in the clear, cold, but just and logical expression of Balfour Browne, of the English bar:

The doctrine of all true educational or reformatory punishment is to punish as long as the individual and class to which he belongs, and on whom the example will operate most powerfully as a deterrent, have capacity sufficient directly to concatenate the suffering with the offense, and to understand how they may avoid the commission of a like crime. Any infliction of punishment under circumstances other than those just alluded to, is not only inefficacious, but tends to diminish the aggregate happiness of mankind, and is to that extent a breach of the trust reposed in the government of the country.

But the pretended expert and philosopher says:

The individual who has sufficient intelligence to know that pointing a loaded pistol at a human being, cocking it and pulling the trigger, are acts which will cause the death of the person, against whom they are directed, should be subjected to the same punishment for a homicide as would be awarded for a like offense committed by a sane person.

Indeed! Does he think so as a philosopher pure and simple, so that like justice it is too abstract to be applied to the law, or does he think so, practically as an expert? Then what motive could have annihilated such opinion and even stimulated his zeal to bring ophthalmoscopes and dynamographs like Chinese artillery to bear upon the jury that McFarland might be set

free, even though he could "cock a pistol," and what inducement could have made him alike forswear his cherished opinion, to break the bonds of Gen'l Cole, although he too, "could pull a trigger," both "with a full knowledge of the consequences of the act."

It may be that an apology is due to my brethren for asking their consideration of a Bombastes Furioso of false experts. But in truth, he is the type of a reckless class of men who are attempting to control the medical and even the secular press of the country, and to poison the public mind until they shall have worked upon popular ignorance and passion, as they hope, to the destruction of the present system of providing for the insane in the United States. As individuals they are insignificant, but wild and unreasoning waves of feeling sometimes arise in this country, and sweep with the velocity of our own prairie fires. How have we seen juries first acquitting, then convicting all supposed criminals under such daily goadings from the press. In fact, the natural conversation of widely differing and separated masses of men throughout a great territory like ours, as an important factor in the social problem, has almost disappeared under the rapid spread of consentaneous sentiment, by modern modes of publication, aided by the telegraph.

These modern Spartans who would sacrifice the weaker members of society, and consign the insane to the fate of the wild beasts, just as the deformed child was flung from Laconian cliffs, are not without the cunning so admired as a virtue by their ancient prototypes. First would they destroy, in order to rebuild. If such delusions can be made to possess medical men, in the center of intelligence and refinement, what may not a Titus Oates accomplish as he fills the credulous ear of the mob with his imaginations and inventions?

Has he not entered the Capital, whence he was once driven with the brand of ignominy after having occupied the highest medical seat of honor in the gift of the country, but occupied, as his superior declared, only to listen to base music rather than the groans and dying plaints of his thousands of country-men in the agonies of mortal strife? Has he not cajoled even Congress to strive to wipe away that stain, when a new generation has forgotten the wrongs of the old? Does not this great moral

reformer, without a belief in a Divine Master and a system of Christian morals, this judge of men's actions, to whom their conduct after all has no more of guiding spiritual motive, than the contortions of a frog, hold a magic ring, whereby the great magician of the New York *Herald* becomes his obedient henchman? Not the least extraordinary indeed of the powers of this Cardiff Giant is his ability to hoax a great metropolitan educative power like the *Herald*. What sublimity of audacity to dictate an editorial like that of the 23d March last:

Thus within a short period a measure of personal restraint has been introduced which equals in horror anything used in asylums before Pinel and Conolly undertook their reformation, and in which a wild beast could not be humanely confined. This is a crib, made after the pattern of a child's crib, but with a barred lid to it.

We have farther a harrowing description of this newly invented engine of torture, with a declaration that restraint is not allowed in Great Britain at all, and that there the asylum superintendent who should put one of his patients into a crib would lose his position in twenty-four hours, if he did not incur more severe punishment, and closing with the exclamation:

Let the asylums be investigated. If they are in good condition and well managed, so much the better for those who control them. If they are as bad as they are said to be the sooner the public knows the fact, the sooner the proper remedy can be applied.

Will it be believed that so complete has been this hoax upon the *Herald*, that it is seemingly unaware that the crib-bed or protection-bed was really introduced thirty-three years ago by the humane Aubanel of Marseilles, and that at this day its great value in certain cases is recognized by its use, even in the most extreme non-restraint asylums in Scotland! How does it happen that the Cagliostro of to-day, even with his wondrous armory of drugs and stage properties, has so lulled the hundred eyes of the metropolitan Argus to unconscious slumber?

But there is a side of this question of the existence of false experts, who impose upon the courts and the public mind, their *presumption* for learning, and their *ignorance* for discovery, which is too solemn for ridicule, too momentous for trifling or jest. It is not that as we remember the victims already buried, that we see Draco reappear, with swift condemnation upon his lips, it is not that the scales of justice drip with blood from

hands already dyed in gore, but that behind the black robe of the semi-judicial expert, may be heard a sound, more fearful than the groans of suffering humanity, more ominous than the click of loaded arms, a sound that chills the marrow as with the breathing of a fabled vampire—IT IS THE CLINK OF MONEY UNDER THE GIRDLE. Now at last we shudder as we recognize that the false expert is no man at all, but a moral monster, whose baleful eyes glare with delusive light; whose bowels are but bags of gold, to feed which, spider-like, he casts his loathsome arms about a helpless prey.

It can scarcely be needful to say, that the more investigation, and the more information for the people, the better will be the final result to the institutions for the insane. Let there be light freely radiated. Dr. Kirkbride has well urged that the study of insanity by physicians be encouraged, and its more thorough exposition in our medical colleges. But it is at least absurd that a captain who has sailed his vessel over many stormy seas, should know less of navigation than the junk-dealer who cuts up the hulk in port. It is not outside the ranks of those who have given their lives to the practical care and cure of insane men, that science will find her guides, and the law, that does not exclude equity from justice, her most honest and faithful co-laborer.

The declaration of the committee of able men,* appointed by the legislature of Massachusetts to examine into the condition of the insane, in 1863, is only verified by length of experience:

The interior management of hospitals, and the treatment of the insane can not be regulated by law. It would be as absurd and futile to attempt by statute, to regulate and control the minute and subtle details of mental hygiene and therapeutics in our hospitals, as it would be to legislate how physicians should treat fever, or how or when a surgeon should amputate in a case of gangrene; or even to place on the statute book, laws with penalties, for guiding the practice of a shipmaster when in peril of shipwreck, with hundreds of alarmed passengers dependent for safety on his free will, cool head, and skillful hand. The entire management and treatment of the insane must be confided to the humanity and skill of the superintendent.

The profession of medicine can not prostrate itself to the procrustean bed of ancient legal prejudice, and as fast as truth is developed and acknowledged, so should the people be taught, until the statutes shall reflect the humanity and justice alike of a Christian nation.

*JOURNAL OF INSANITY, Vol. XXI, p. 263.

APPENDIX.

TO THE MEDICAL PROFESSION:

The foregoing paper was read at the late meeting of the Association of Medical Superintendents of American Institutions for the Insane, held at Washington, D. C., May, 1878.

Its preparation was conceived purely in the interests of science, and the yet stronger claims of justice and humanity.

The reader has the pages before him, in which an effort has been made to present a truthful and dispassionate review of the position assigned to medical experts testifying in relation to the mental condition of the alleged insane, in the past history of our courts. Some suggestions of changes in the manner of receiving expert evidence, and the collection of the same, with considerations of the weight that should attach to the unbiased declarations of a truly scientific physician of the insane, serving as *amicus curiæ*, have been respectfully offered, to the end that the purposes of justice may be more effectively subserved than is possible under the present modes of legal investigation. It is, in fact, an appeal for a better and more direct approach to the truth, in so solemn an inquiry as an inquisition appointed by the law involving the fortune, the reputation, or the life of a fellow-being.

No one can deprecate the entrance of unseemly strife within the peaceful walks of medical philosophy more than the writer. But a deep sense of duty to the unfortunate who have been wronged, and to the honor of the medical profession, made it imperative to lay the whole subject before the body of professional alienists in America, and my brethren of the medical art.

It was impossible to claim greater dignity for skilled medical testimony, to ask more freedom for expression of opinion by the expert who truly represents the conclusions of science, and to demand that an independent standpoint be accorded to him, rather than a continuance of the present practice of calling him

to the assistance of counsel on either side; it was impossible, we say, to urge this change in the interests of justice, without painfully acknowledging the reproach cast on medical witnesses under the present system, by ignorant pretenders and mercenary charlatans under the garb of scientific experts.

The records of the courts show that a class of men exist, whose reckless and opposing opinions before uninformed juries of laymen, in accordance with the interests of the side which paid their fees, could have been inspired only by the lust of gain. The immediate duty, therefore, was to scourge the cheat from the shrine which his voice profaned, as in the language of the preceding pages:

"But if we have justly portrayed the strength and the profound moral dignity accompanying the careful declaration of an expert, after cautious investigation, where human life and high and honorable repute hang in the balance, what language can characterize the rash intruder who plays with such fearful issues without knowledge, or the trafficker in human misery, who sells his opinions for gold. In olden time, only the vestals robed in perpetual purity could keep alive the sacred fires, and profanation of their vows was punished by burial alive. What burial of public contempt could be too deep for the man who should prostitute science in the market and smother her pure light under his greed for pelf?"

That such infamy absolutely existed among us, in this day of Christian civilization, it was needful to show, for as it was hard for the Roman law-giver to conceive the existence and provide for the punishment of a parricide, so is it not the less difficult for the true physician to realize that persons exist, and even rejoice in high places, who would sell science, humanity, their country, justice, nay, even pity, too, for jingling silver in their sordid palms. Therefore, from logical necessity, came the demonstration of this fact by the illustration presented in the history of a conspicuous man, who has been *primus inter pares* in this venal trade. Naturally he who has been the chief offender, and whose ill-gotten gains and strong personal influence enable him to debauch the public press and gild his wickedness before the world, is the proper person upon whom to invite the stern retribution of betrayed justice. It must be admitted that the task is repulsive, and no motive short of absolute duty could have inspired the writer to its performance. So far as the fate of the particular man is concerned, who serves as the illustration of the sad truth, it is a matter of indifference.

He might have been Smith, or Jones, or Brown; he might have been John Doe or Richard Roe so far as the subject matter is concerned. Personally, he was, and is, nothing. The writer never had the misfortune to meet him, nor have circumstances in the remotest manner brought about any personal antagonism whatever. It is the *principle*, not the *individual*, that is at stake. His history was known by reason of the notoriety that follows such names, and his existence was a fact that established the issue in question; namely, that the dangerous witnesses which we have denominated False Experts did infest the courts. Nor have I conceived it needful to use tender language in describing any witness whose ready opinions condemned the innocent for money's sake, as a Titus Oates, or in denominating the charlatan on a colossal scale, as another Cagliostro.

Strange to say, the witness referred to is not content to remain unheralded under the merciful silence which forbore to give his name to the public, although his history and character had long been appreciated by many of the most eminent physicians of the Union. Letters and telegrams and personal congratulations from many sections of the Union have assured the writer that this effort to cast off an opprobrium from the profession was understood and sympathized with by many of the noblest members of the profession, whose special practice and research lie in other departments of medical science, rather than in those of the alienist.

Under the name of William A. Hammond, M. D., of New York, he has addressed the writer an "Open Letter," which is a fit and appropriate production to emanate from such an author. Self-respect forbids that a man, capable of such a vituperative production, and whose personal and professional history are such as his is known to be, should be addressed by a gentleman, even in terms of hostile defiance. The shower, therefore, of personal abuse with which he wishes to conceal his own acts cannot receive the dignity of personal notice, nor shall the true status of the question at issue be thus artfully hidden.

The writer's words are for the honorable fraternity of medicine, regardless of the assaults of one whose misdeeds concern

us directly only so far as they point a moral. What concerns the medical profession and all intelligent and honorable men are the following questions:

Is it true that there are men who have debauched the course of criminal justice, by offering mercenary statements for impartial and scientific testimony, so that the regulations for the admission of expert evidence need modification?

Is Dr. Wm. A. Hammond, whose name was not called by me, such a man as has been described, and as the facts adverted to, in the several cases mentioned in the foregoing paper, indicate

He has been solemnly impeached, before the bar of public opinion. The impeachment is sustained by reference to the records of his shame.

Has he denied the record? Does he disprove the fearful facts? Does he even argue the possibility of his innocence?

Nay, instead of addressing himself to the reason of an intelligent public, and appealing by argument against the justice of the impending sentence, which shall drive him from the pale of respectable association, he turns with ribald but impotent fury upon the writer, and insults decency, by threats and execrations and virtuperative abuse, just as some poor cur of the kennel spits venom at the hand which has whipped him back to his own place, lest he hurt again the unwary and innocent passer-by.

There is an intimation couched in vulgar terms, in the course of Dr. Hammond's pamphlet, that had he been present on the occasion of the delivery of the address upon "True and False Experts" that he would have resorted to personal and degrading violence. Could anything add to the immeasurable scorn with which any gentleman, and I am sure my esteemed readers, view this token of his underlying character, it would be, that he confines himself to a printed threat, at a distance of five hundred miles. I confess my inability to find language, and my distaste if such be found, to reply after such fashion, to one who so signally demonstrates his fitness for the title of Bombastes. For the rest, let him venture nearer with his threats, if he dare.

Personal controversy is, however, not of interest to the public. The duty of the hour is to place facts before such mem-

bers of the medical profession as may not be acquainted with the character of the individual referred to. This is needful, simply to establish the correctness of the position, that such persons are to be found as False Experts.

So far as the connection of this witness is concerned with the cases of Cole, McFarland, Montgomery and Reynolds, as referred to in the preceding pages, the facts speak for themselves, inasmuch as they exhibit him in the attitude of making general declarations of scientific dicta, of an exactly opposite character, in accordance with the interests of the side upon which he testifies as a paid expert.

With the text of the paper upon expert testimony before the reader, and the explicit statements that convict Dr. Hammond of so high an offense against justice and humanity, as the offering of contradictory evidence, it would naturally be supposed that the "Open Letter" would at least present some sort of a refutation, if it were possible, of the fearful facts alleged, and would meet the issue with something at least of the courage that sometimes remains, when other virtues have departed. But no, indeed, readers of the "Open Letter" are gravely told that the sole cause of his offence was the expression of his views, "without the slightest personality, on the subject of mechanical restraint in Insane Asylums." That such a declaration is absurd need not be dwelt upon; it is as if the burglar when arraigned, should defend himself upon the imaginary charge of a solecism in good manners, or as if a forger should complain that his political opinions had been questioned by the prosecution. The professional alienists feel no concern at any attacks upon the present mode of treating the insane, and especially as to whether the restraint, which is the merciful privilege of the unfortunate maniac who has lost Nature's own powers of restraint, should be in any particular case best exercised by manual, mechanical or moral means. If better modes can be suggested for the comfort and restoration of patients than any now employed, they will be glad to avail themselves thereof. If, however, the suggestions are merely artful devices to awaken popular distrust and clamor for sinister ends, they are competent to meet the issue. It is but trifling with a grave question of the infliction of deep wounds

upon society, to account for this arraignment, by the supposition that a difference in opinion upon a scientific question, or indeed that of any other question whatever, personal to the individual, inspired the condemnation of offences, conceived in wrong motive, performed with disastrous results, and so injurious to the medical profession as imperatively to demand exposure and reprobation.

It is sufficient perhaps to dwell here, unless there should be denial of these facts. Sufficient evidence can be produced, not only in these, but in other cases, to demonstrate their truth. But there is a case, not adverted in "True and False Experts" which it may serve the cause of truth to recall.

Dr. Hammond says that he respects the State (meaning North Carolina), whose record has been such that all her sons when they call it to mind, can hold up their heads in honest pride.

He will not forget perhaps that a part of the records of her Supreme Court is the Johnston Will Case, *Wood v. Sawyer*, 251 Phillips' N. C. Reports (Law). The case is the appeal of the caveators of the will of Jas. C. Johnston, Esq., of Chowan county, N. C., who died in March, 1865, having made his will in April, 1863, by which he placed the disposition of his large estate, in four counties, in the hands of the persons whom he deemed best fitted to manage such estate in the interest of the benevolent objects he had nearest to heart. Mr. Johnston was a gentleman of advanced years, and unmarried. The caveators sought to break the will, on the plea of insanity, and Dr. Wm. A. Hammond was summoned as an expert. Through the kindness of eminent legal gentlemen, the original notes of his testimony are before me. He declared that Mr. Johnston was insane. He had no personal knowledge of the case, nor did he hear a single witness in behalf of the propounders of the will, but announced his decision as an expert upon the *ex parte* hearing of the other side (the caveators), although he was opposed in such opinion by most, if not all, the local physicians who testified on this point, and who were personally acquainted with the testator, and had been for years, including his family physician.

He next affirmed that in mania there was no such thing as a lucid interval, in order to make it doubly sure, that the will

was the product of an insane mind. But pressed hard upon his doctrine of the impossibility of lucid intervals in mania, he retracts and agrees that there might be lucid intervals in *mania*, but never in *monomania*, of which he had declared Mr. Johnston a victim!

In other words, when disorganization of the brain prevents the normal use of *all* the mental faculties, the condition is not irremediable or constant, for reason may be reseatated permanently or temporarily, but when only *one* faculty is affected the case is continued and hopeless. What a psychologist! What a professor of mental diseases and expert in insanity!

The estimation in which his testimony was held by the distinguished Jurists of the Supreme Court of North Carolina (June, 1867,) in the review of this case will be seen by reference to their opinion. Their language while expressed with the calm precision of the bench, is eloquent of contempt.

"It is well settled that the opinion of an expert is competent evidence in questions touching the science or art which he professes. And when an expert has given his opinion, it is also competent for him to give the reasons upon which his opinion is founded, in order that it may be seen whether his opinion is entitled to more or less weight. And, in this way, and in this way only, can it be determined whose opinion is entitled to most consideration, where experts differ.

Here the caveators took the opinion of an expert as to the sanity of a testator, and then attempted to elicit facts to support the opinion. And if the facts sought to be elicited were relevant, then it was error to exclude them. What then were the facts sought to be elicited? Not anything that he had learned in relation to the testator, or anything which he knew or had learned from science or from scientific men, but facts which he had heard an insane man relate as to the history of his disease, and facts which he had heard an unprofessional nurse relate of the history of the patient, facts to which he had applied no test of truth, and to which none could be applied. Surely the exclusion of such testimony from the consideration of the jury was most proper, and so far from injuring, must have benefitted the caveators; for if the expert had sustained his opinion upon such considerations as these, his conclusion would have been as worthless as his reasons were frivolous. They could not possibly have added any weight to the most hesitating, and they would certainly have detracted from the most confident opinion.

Courts charged with the investigation of truth are greatly indebted to men of science who contribute the aid of their opinions. But marvellous narrations and careless stories disparage science, mislead rather than instruct, and ought not to be allowed consideration."—Phil. Law, page 251.

The Will was sustained, the sanity of the testator having been confirmed.

But what was the reason for his deep interest in establishing the insanity of the testator? It appeared that for his testimony

he should not only receive five hundred dollars, but that should he make it sufficiently strong to break the Will, he expected to receive a contingent fee of twenty-five hundred dollars. What superb and audacious mockery of justice this spectacle of an impartial witness testifying to five hundred dollars worth of truth, cash in hand, and a thousand or two more on credit, provided he could discover enough of such truth!

Will any man esteem his life, or reputation or even his paltry purse, safe in the hands of a man who could make such bargain of his conscience? Who is secure where the "False Expert" can win belief to his mercenary tale?

Is it unprofessional to vindicate the medical profession from such reproach? The writer has the honor, most gratefully esteemed, of a seat in the Judicial Council of the American Medical Association, and far be from his thoughts a conscious departure from the rules of medical ethics, but the task of unmasking conduct like this, however destructive the result may be to the reputation of the witness referred to, is but obedience to that lofty principle in both medical and moral ethics, which demands truth and justice of us for the safety of society.

Dr. Hammond left before the conclusion of the trial; and, it is said, gave up his contingent share of the spoils, because it was believed that the law forbade the reception of the testimony of any party interested in a suit. Such was not the actual state of the law at the time, but the statute allowing parties with interests contingent in a suit, to testify had been lately passed, and was not generally known to the people at large. And he was taken aback on the stand when confronted with his declaration to one of the medical witnesses that he came as "medical counsel," forgetful that paid advocates in cases are not supposed to be impartial scientific experts in North Carolina.

If the facts as the writer has related them are denied, the statements are within his reach of the learned and justly celebrated counsel in the case, from whom his information is derived.

In order that the allusion to the dismissal of Dr. Hammond from his position as Surgeon-General of the United States Army may be the better understood by those members of the medical profession in the section of the country where he has widely dis-

tributed his abusive letter, it is necessary to quote the charges and specifications of which he was found guilty by a General Court Martial convened at Washington, D. C., Jan'y 19th, 1864:

GENERAL COURT MARTIAL ORDERS, No. 251.

WAR DEPARTMENT,

ADJUTANT GENERAL'S OFFICE,

Washington, August 20, 1864.

I. Before a General Court Martial, which assembled in the city of Washington, D. C., on the 19th day of January, 1864, pursuant to Special Orders, No. 24, dated War Department, Adjutant General's Office, Washington, January 16, 1864, and whereof Major General R. J. OGLESBY, U. S. Volunteers, is President, was arraigned and tried—

Brigadier General *William A. Hammond*, Surgeon General, U. S. Army.

CHARGE I.—“Disorders and neglects to the prejudice of good order and military discipline.”

Specification 1st—“In this: that he, Brigadier General *William A. Hammond*, Surgeon General, United States Army, wrongfully and unlawfully contracted for, and ordered Christopher C. Cox as Acting Purveyor in Baltimore, to receive blankets of one William A. Stephens, of New York. This done at Washington city, on the 17th day of July, in the year of our Lord one thousand eight hundred and sixty-two.”

Specification 2d—“In this: that he, Brigadier General *William A. Hammond*, Surgeon General as aforesaid, did, on the first day of May, in the year of our Lord one thousand eight hundred and sixty-three, at Washington city, wrongfully and unlawfully, and with intent to favor private persons resident in Philadelphia, prohibit Christopher C. Cox, as Medical Purveyor for the United States in Baltimore, from purchasing drugs for the army in said city of Baltimore.”

Specification 3d—“In this: that he, the said Brigadier General *William A. Hammond*, Surgeon General, United States Army, did unlawfully order and cause one George E. Cooper, then Medical Purveyor for the United States in the city of Philadelphia, to buy of one William A. Stephens blankets for the use of the government service of inferior quality, he, the said Brigadier General *William A. Hammond*, then well knowing that the blankets so ordered by him to be purchased as aforesaid were inferior in quality, and that said Purveyor Cooper had refused to buy the same of said Stephens. This done at Philadelphia, in the State of Pennsylvania, on the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and sixty-two.”

Specification 4th—“In this: that he, the said Brigadier General *William A. Hammond*, Surgeon General as aforesaid, on the fourteenth day of June, in the year of our Lord one thousand eight hundred and sixty-two, at the city of Washington, in the District of Columbia, unlawfully and with intent to aid one William A. Stephens to defraud the government of the United States, did, in writing, instruct George E. Cooper, then Medical Purveyor at Philadelphia, in substance as follows:

‘SIR: You will purchase of Mr. W. A. Stephens eight thousand pair of blankets, of which the enclosed card is a sample. Mr. Stephens’ address is box 2,500, New York. The blankets are five dollars per pair.’

and which blankets so ordered were unfit for hospital use.”

Specification 5th—"In this: that he, the said Brigadier General *William A. Hammond*, Surgeon General, United States Army, on the sixteenth day of June, in the year of our Lord one thousand eight hundred and sixty-two, at the city of Washington, did corruptly, and with intent to aid one William A. Stephens to defraud the government of the United States, give to the said William A. Stephens an order, in writing, in substance as follows: 'Turn over to George E. Cooper, Medical Purveyor at Philadelphia, eight thousand pair of blankets,' by means whereof the said Stephens induced said Cooper, on government account and at an exorbitant price, to receive of said blankets, which he had before refused to buy, seventy-six hundred and seventy-seven pair, and for which the said Stephens received payment at Washington in the sum of about thirty-five thousand three hundred and fourteen dollars and twenty cents."

Specification 6th—"In this: that he, the said Brigadier General *William A. Hammond*, Surgeon General, United States Army, on the thirty-first day of July, in the year of our Lord eighteen hundred and sixty-two, at the city of Philadelphia, in the State of Pennsylvania, well knowing that John Wyeth & Brother had before that furnished medical supplies to the Medical Purveyor at Philadelphia which were inferior in quality, deficient in quantity, and excessive in price, did corruptly, unlawfully, and with intent to aid the said John Wyeth & Brother to furnish additional large supplies to the government of the United States, and thereby fraudulently to realize large gains thereon, then and there give to George E. Cooper, then Medical Purveyor at Philadelphia, an order in writing, in substance as follows: 'You will at once fill up your store-houses so as to have constantly on hand hospital supplies of all kinds for two hundred thousand men for six months. This supply I desire that you will not use without orders from me.' And then and there directed said Purveyor to purchase a large amount thereof, to the value of about one hundred and seventy-three thousand dollars, of said John Wyeth & Brother."

Specification 7th—"In this: that he, the said Brigadier General *William A. Hammond*, Surgeon General, United States Army, about the eighth day of October, in the year of our Lord eighteen hundred and sixty-two, at Washington city, in contempt of and contrary to the provisions of the act entitled 'An act to reorganize and increase the efficiency of the Medical Department of the Army,' approved April 16, 1862, did corruptly and unlawfully direct Wyeth & Brother, of Philadelphia, to send forty thousand cans of their 'Extract of Beef' to various places, to-wit: Cincinnati, St. Louis, Cairo, New York, and Baltimore, and send the account to the Surgeon General's Office for payment, and which Extract of Beef so ordered was of inferior quality, unfit for hospital use, unsuitable and unwholesome for the sick and wounded in hospitals, and not demanded by the exigencies of the public service."

Specification 8th—"In this: that he, the said Brigadier General *William A. Hammond*, Surgeon General, United States Army, about the first day of March, in the year of our Lord eighteen hundred and sixty-three, at Washington city, in disregard of his duty, of the interests of the public service, and of the requirements of the act entitled 'An act to reorganize and increase the efficiency of the Medical Department of the Army,' approved April 16, 1862, did order and direct that the Medical Inspectors should report the result of their inspections direct to the Surgeon General."

CHARGE II.—"Conduct unbecoming an officer and a gentleman."

Specification—"In this: that he, Brigadier General *William A. Hammond*, Surgeon General, United States Army, on the thirteenth day of October, in the year of our Lord eighteen hundred and sixty-two, at Washington city, in a letter by him then and thereaddressed to Dr. George E. Cooper, declared in substance that the said Cooper had been relieved as Medical Purveyor in Philadelphia because, among other reasons, 'Halleck,' meaning Maj. Gen. Henry W. Halleck, General-in-Chief, requested as a particular favor that Murry might be ordered to Philadelphia, which declaration so made by him, the said Brigadier General *William A. Hammond*, Surgeon General as aforesaid, was false."

CHARGE III.—"Conduct to the prejudice of good order and military discipline."

Specification 1st—"In this: that he, the said Brigadier General *William A. Hammond*, Surgeon General, United States Army, on the eighth day of November, A. D. 1862, at Washington city, did unlawfully and corruptly order and cause Henry Johnson, then Medical Storekeeper and acting Purveyor at Washington city, to purchase three thousand blankets of one J. P. Fisher, at the price of \$5.00 per pair, and to be delivered to Surgeon G. E. Cooper, United States Army, Medical Purveyor at Philadelphia."

Specification 2d—"In this; that he, the said Brigadier General *William A. Hammond*, about the third day of December, A. D. 1862, at Washington city, unlawfully and corruptly purchased and caused to be purchased of J. C. McGuire & Co., large quantities of blankets and bedsteads, and which were not needed for the service."

PLEA.

To all which charges and specifications the accused pleaded "Not Guilty."

FINDING.

The Court, after due and mature deliberation upon the evidence adduced, does find the accused, Brigadier General *William A. Hammond*, Surgeon General, United States Army, as follows:

CHARGE I.

Of the 1st *Specification*, "Guilty."

Of the 2d *Specification*, "Guilty, and that the offense therein charged was committed on the 30th day of May, A. D. 1863, except as to the words 'and with intent to aid private persons resident in Philadelphia,' and as to which words so excepted, 'Not Guilty.'"

Of the 3d *Specification*, "Guilty."

Of the 4th *Specification*, "Guilty, except as to the words 'and which blankets so ordered were unfit for hospital use,' and as to which words so excepted, 'Not Guilty.'"

Of the 5th *Specification*, "Guilty."

Of the 6th *Specification*, "Guilty."

Of the 7th *Specification*, "Guilty, except as to the words 'corruptly and,' and which Extract of Beef so ordered was of inferior quality, unfit for hospital use, unsuitable and unwholesome for the sick and wounded in hospitals, and not demanded by the exigencies of the public service,' and of the words so excepted, 'Not Guilty.'"

Of the 8th *Specification*, "Not Guilty."

Of the 1st CHARGE, "Guilty."

CHARGE II.

Of the *Specification*, "Guilty."

Of the 2d CHARGE, "Guilty."

CHARGE III.

Of the 1st *Specification*, "Guilty, except as to the words 'and corruptly,' 'and cause,' and as to which words so excepted, 'Not Guilty.'"

Of the 2d *Specification*, "Not Guilty."

Of the 3d CHARGE, "Guilty."

SENTENCE.

And the Court does therefore sentence him, Brigadier General *William A. Hammond*, Surgeon General, United States Army, "*That he shall be dismissed the service, and be forever disqualified from holding any office of honor, profit or trust under the government of the United States.*"

II.—In compliance with the 65th of the Rules and Articles of War, the whole proceedings of the General Court Martial in the foregoing case have been transmitted to the Secretary of War, and by him laid before the President of the United States.

The following are the orders of the President of the United States:

The record, proceedings, findings, and sentence of the Court in the foregoing case are approved; and it is ordered that Brigadier General *William A. Hammond*, Surgeon General of the United States Army, be dismissed the service, and be forever disqualified from holding any office of honor, profit, or trust under the government of the United States.

AUGUST 18, 1864.

A. LINCOLN.

III.—The General Court Martial of which Major General R. J. OGLESBY, United States Volunteers, is President, is dissolved.

BY ORDER OF THE SECRETARY OF WAR:

OFFICIAL:

E. D. TOWNSEND,
Assistant Adjutant General.

Assistant Adjutant General.

That this degrading and dishonoring sentence should have been agreed to by a Court of Officers of high rank, upon their solemn oaths, and the evidence received and the sentence confirmed by the President of the United States, is a crushing fact that no explanation can remove. After many years, and several changes in the presidential chair, and after many of the Officers familiar with his offences have passed away, and General Halleck, whom he libeled is also dead, he has succeeded in having the case re-opened, in the hope to wash away the ancient stain. Vain expectation! No declaration of a committee of two or three officers, able as they may be, would, after the lapse of so many years, *outweigh* the deliberate finding of a large Court of disinterested Officers, held at the very seat of his power; long and patiently employed in his trial, until twenty-four hundred pages of evidence had been accumulated, and therefore familiar with all the details of the wrong-doing. Abraham Lincoln was not the man he has been pictured to the American people, by both Northern and Southern writers, if he sanctioned the dismissal in disgrace of the first medical offi-

cer of the Army, upon anything less than the necessity of such punishment, swift and condign. Such a reflection is to impute to him a want of common sense, and the wanton surrender of a useful servant such as his direst enemies never accused him of.

It is needless to enter into the numerous apparently unprofessional acts that have characterized his career in private practice. But one instance is so flagrant that it appeals to the common sense of the reader, as laughably absurd, as if it were indeed Cagliostro displaying his arts again.

I have authentic information that a distinguished and entirely reliable gentleman in North Carolina, once had occasion to consult Dr. Hammond, on account of apprehended congestion of the brain, or some trouble incident to the great amount of mental labor which he had undergone. Dr. Hammond received him, heard his statement of symptoms, and gravely brought forth one of the many instruments, which are well calculated to dazzle the eyes of the laity. Instructing him to fix his gaze upon the needle, he solemnly informed him that he was endeavoring to ascertain the seat of the temporary congestion from which, he said, the gentleman was suffering; and that if the trouble were in the *front* of the brain, the needle would be found to point in a certain direction, but if at the base of the brain, then the reverse movement would take place. The writer is aware that some of these revelations will shock a portion of his professional brethren almost into incredulity, but let Dr. Hammond deny this statement, and he shall be confronted with the testimony of the gentleman whom he could not deceive. So far as allusion is made to the atheistical opinions of Dr. Hammond, the reader will observe that reference to the same, is only made upon the score that it ill becomes one who assumes the role of a reformer in social ethics, and advocates the execution of actual maniacs who have broken the laws, when for him morality can scarcely have an existence,—and religion must be a superstitious dream. Nor is he content to express his disbelief in events sacred to all christendom in any moderation of language, but speaks, for example, of the great work done by the sincere and devout Wesley for the reformation and blessing of mankind, in a tone that vividly tells of a whole mental and moral constitution at war with the no-

blest emotions and deepest sympathies of Christian life. In reference to a long extract from Wesley's journal descriptive of what are termed "revivals," he uses the following language: "This is not all, there is a great deal more to the same effect, and were it not that there is such a condition as hysteria, we should be disposed to take the other alternative of demoniacal possession as an explanation of the frightful orgies which under the blasphemous designation of the "out pouring of the spirit of God" excelled in hideousness the frenzies of the demonolators of the East." (See Hammond on Spiritualism and Nervous Derangement, page 239.)

In a preface and postscript to a second edition of the "Open Letter" addressed to the writer by Dr. Hammond, appear several accusations, one of which is, that I did not advertise the fact, that in the Association of American Superintendents of the Insane, representing the British Provinces, and every section and most of the States of this Union, he had *three* sympathizers. It ought to be satisfactory to him to know that I had had no opportunity of doing so, notwithstanding his untruthful charge that I had published my speech in the newspapers. If, however, the *extent* of his merit is to be judged by the *number* of his sympathizers, he ought not to complain of the omission.

Another charge he has the temerity to attempt to sustain by the authority of the Chief Justice of North Carolina, in this language:

"I have ascertained that the Chief Justice of North Carolina has decided that you are not entitled to hold the office you occupy, but that thus far, by a legal stratagem, you have succeeded in defeating the true intent of the law."

In reference to this absurd untruth, the writer appends the certificate of the Clerk of the Supreme Court, for the past nine or ten years, that there has not even been litigation in regard to the office which I have the honor to hold, at the hands of the good people of North Carolina. I further add the statement of the President of the Board of Directors, than whom no physician of this State is more widely known and honored by the medical profession. Since the war our State constitution has been altered several times, and there have been changes as to the manner of appointment to office and of terms of office. And as is usual party politics has had its influence, and there has

been litigation in several cases. As for instance whether the Governor or the Legislature should appoint or whether a term expired at one time or another. There has been no litigation as to my term of office, but the question was at one time canvassed in the papers with the usual political severity—some holding that my term expired at one time and some at another. The question was settled by the Board of Directors as stated by its President, Dr. E. Burke Haywood. Since my connection with the Insane Asylum, as is well known, I have taken no active part in politics; and my management of the Institution and my professional qualifications being satisfactory, whatever there might otherwise have been of political animosity, gave way. During the newspaper discussion there was some bitterness displayed, especially by those who wanted the place for themselves or their friends.

If any unfriendly communications have been made to Dr. Hammond by physicians and gentlemen from North Carolina as he boasts, the public can understand their character and motive. With the exceptions above mentioned, the intelligent public of North Carolina have been personally and professionally kind to me, and I do them the justice to say, that I do not believe that they have lent themselves, as Dr. Hammond says they have, to aid his attacks upon me. But there are a few Hammonds everywhere.

Another accusation is implied in various artful expressions to catch the popular ear, of cruelty to the patients under my charge, as for example, in the expression “mechanical restraint not less galling than that which you are in the habit of inflicting on the poor wretches under your supervision in the Insane Asylum at Raleigh.”

It is scarcely necessary to remind any North Carolinian, that if this wicked charge of cruelty to those whose misfortunes set them apart from their fellow-men, and so challenge the holiest emotions of sympathy and profound pity, had the least foundation save in the base imaginings of its author, it would carry condemnation to many of the noblest and most eminent men of the State. For ten years have Committees of Investigation been appointed by our Legislatures, and they have given the most continual and ample examination of all the details of the

general administration and interior management of the institution, and their full and ample reports are parts of the proud history of the Asylum deeply prized by its officers.

North Carolinians, too, are familiar with the fact that the Asylum while under my charge, has been under the immediate supervision and control as Directors, of such gentlemen as Dr. Chas. E. Johnson, for many years President of the Board, and Dr. E. Burke Haywood, who now fills that honored position; of the late Gov. Thos. Bragg, and the Hon. A. S. Merrimon, present U. S. Senator from this State, and the Hon. Kemp P. Battle, the distinguished President of the University of North Carolina; of Dr. J. J. Summerell, a physician of forty years experience and extensive reputation, and Rev. B. Craven, D. D., LL. D., the President of Trinity College. Such Directors too, as the Hon. Joseph J. Davis, the present representative in Congress from the Metropolitan district, and such gentlemen of the elite of the State, as Dr. Pride Jones; Charles Dewey, the eminent banker; Maj. C. Dowd, the law partner and friend of Gov. Vance; the Hon. W. N. H. Smith, now Chief Justice of North Carolina; Dr. J. G. Ramsay, of Rowan county; Hon. R. C. Badger, of Raleigh; Col. W. R. Myers, of Charlotte, so well known throughout the State; Maj. F. H. Cameron, the President of the North Carolina State Life Insurance Company, and Col. T. G. Walton, a leading citizen of Western North Carolina.

He is a bold man who will have the hardihood to assert that this long line of eminent North Carolinians, with others who might be named, taken from all divisions of the political field, and with the most varied talents and accomplishments, could not discover and bring to light anything wrong or unjust in the management of this institution, or such being the case, would not have had the firmness and independence to apply the instant remedy. On the contrary, nothing is better known to the people to whom this Institution and its charities are a charge inexpressibly sacred, than the generous and the unfaltering support which these distinguished citizens always gave to my administration, and to all the interests of the Asylum.

Nor can I say less of the able and devoted members of the present Board of Directors appointed by His Excellency Governor Z. B. Vance, and to whom I am proud to acknowledge

the same obligation of kind appreciation as from their predecessors, and whose humane care and deep interest in the work committed to their charge has never been exceeded by any however gifted and patriotic in devotion to duty.

Rev. Dr. B. Craven, Dr. E. Burke Haywood, and Maj. C. Dowd are again in their old labor of philanthropy, with the efficient aid of Col. J. S. Amis, esteemed and beloved in so wide a circle of friends, of Dr. J. T. Leach, whose name is a terror to evil doers, of Col. A. M. McPheeters, foremost in many good and charitable works, and of Dr. S. G. Ward, Julius Lewis, Esq., and Col. James G. Burr, among the most respected and esteemed citizens of the State.

It is not, I say, in such a body of men, that any toleration can be found for any system of treatment that shall be wanting in whatever humanity and the most approved systems of treatment can devise, for the comfort and restoration of the victims of so dread a calamity.

What feelings must sway the heart of one who could outrage the official honor of such men, by wanton slurs upon an Institution under their control; nay, who could harrow up the fears and apprehensions of the friends of these sad unfortunates whose consolation is our daily study. Thus would he forge a weapon from their anxieties and sorrows, to pierce one whose calm statements of fact he cannot meet. Is this the conduct of a true physician?

As a final answer to this charge of cruelty to the patients who are under the fostering care of the State, in this institution, I herewith append a letter from the Executive Committee, who, in the absence of the Board of Directors, have immediate charge and supervision of the affairs of the Asylum, both internal and external, and whose ceaseless vigilance and devotion it is unnecessary for me to commend to their fellow-citizens.

He but repeats, however, his own history in these charges. It will not be forgotten that a court of high rank has convicted him of deliberate falsehood.

If it be possible that any man has played the part of jackal, or scavenger for such a person as this "False Expert," let his name be given, that he may be properly branded and scorned.

If any "prominent physician" or "gentleman" in North

Carolina wrote him as he claims, let him give his name. And if not, let him at least advise him that it would be more manly in a "prominent physician" or a "gentleman" to assume the responsibility of any criticism that he may have to make either of my address or of myself, than to hide behind a mountebank or a charlatan, to shoot his arrows.

EUGENE GRISSOM.

STATE OF NORTH CAROLINA,

Supreme Court,

RALEIGH, July 6th, 1878.

DR. EUGENE GRISSOM, *Raleigh, N. C.:*

MY DEAR SIR: In response to your request of this date, I reply that I have been Clerk of this Court, continuously, since January, 1869, and that there has been no suit or matter pending in said court, or before either of the Chief Justices, who have occupied the bench during that time, in which your right or title was involved to the superintendency of the Asylum for the Insane of this State.

Very truly yours,

WM. H. BAGLEY.

RALEIGH, N. C., July 8th, 1878.

EUGENE GRISSOM, M. D., *Sup't of the Asylum for the Insane of North Carolina:*

DEAR SIR: I have just received your note, calling my attention to the following extract from the postscript to an "Open Letter," addressed to you by William A. Hammond, M. D., of New York. "I have ascertained that the Chief Justice of North Carolina has decided that you are not entitled to hold the office you occupy, but thus far by a legal stratagem, you have succeeded in defeating the true intent of the law." For several years I have been a member, and part of that time, President of the Board of Directors for the Asylum for the Insane of North Carolina. During that time there has not been any litigation or judicial decision in relation to your tenure of office. At a called meeting held March 6th, 1878, the present Board of Directors resolved unanimously to regard and sustain you as Superintendent for four years from January 1st, 1878.

Yours, very respectfully,

E. BURKE HAYWOOD, M. D.,

*President of the Board of Directors of the
Asylum for the Insane of North Carolina.*

RALEIGH, N. C. July 19th, 1878.

DR. EUGENE GRISSOM, *Superintendent Insane Asylum of North Carolina:*

DEAR SIR: Yours of this date to hand, in which you call our attention to the fact that in a recently published "Open Letter," addressed to you by Dr. Hammond, of New York, he, by implication, charges you with cruelty to the patients in our Asylum.

As the local members of the Executive Committee of the Board of Directors, we have, at all times, free access to the Asylum, and frequently visit it, and are brought in contact with the patients, attendants and officers, and all others connected with the Institution, and we have never heard from any one even an intimation of unkindness, much less cruelty, on your part, or any other officer, but on the contrary we have every reason to believe that in your intercourse with and treatment of the unfortunate ones under your care, you are uniformly kind and considerate, doing every thing in your power for their relief and comfort.

Yours truly, &c.,

A. M. MCPHEETERS, } *Ex.*
JULIUS LEWIS, } *Com.*

POSTSCRIPT.

RALEIGH, October 1st, 1878.

The members of the medical profession, and indeed, the general public, have been troubled with a publication distributed broadcast throughout the country, declaring itself a "Second Open Letter," addressed to the writer by the person whose career has so conspicuously illustrated the "False Expert" hereinbefore described.

It is a labored effort to gather together whatever of the low and vile in expression our language can suggest, to a mind fitted by natural tastes for the base, and with desperate energy, to pour forth upon the writer the mass of personal abuse thus laboriously heaped together, consisting, as it does, of ideas the most loathsome of which one can conceive. Yet such a production has been gravely sent to physicians of character and distinction, and widely distributed among the most eminent citizens of the country, in the expectation of its perusal. A brief glance will strike every reader with the audacity of the individual who could so insult the ordinary decencies of life as to present such a paper for the consideration of gentlemen.

But if lack of manners be pardoned in an unhappy man, driven by public scorn into passionate revilings, and lashed by self-contempt into a paroxysm of rage, the reader will farther observe that although Dr. Hammond has time and space enough for pages of hysterical denunciation, he does not offer a single paragraph of argument in defence of his conduct, touching the infamous charges of which he stands accused, and alas, for the honor of his profession, convicted.

The case is before the reader in the preceding pages. Months have elapsed since the meeting of the American Association of Superintendents of the Insane—two publications have been made by him, and yet not a line of evidence is offered to exculpate him, or even to mitigate offences which almost exceed belief. He simply avoids

and hides. Not one fact in his wicked career as alleged, has been disproved, nor can he attempt to explain. *He can not, he dare not.*

So long as this is true, idle railings but render such a position more pitiable, and place him farther from a renewal of former associations with any reputable physician.

Among the many false statements which disgrace the last paper of Dr. Hammond, there are several conspicuously slanderous assertions of his, which may be concisely disposed of, as follows:

We are informed that an instrument entitled Lombard's Thermo-Electric Calorimeter, a certain complicated double thermometer for the testing of animal heat was the apparatus employed in the case heretofore "considered in which congestion was to be diagnosed through the gaze of a patient at a needle.

It is sufficient to say that I have in my possession letters from some of the most distinguished physicians from the most learned centres of the Union, and all disclaim any knowledge of such an instrument, save in the reference given in Dr. Hammond's own book. They stand among the first in the medical world. Some write "I regret very much that I can give you no information in regard to the Calorimeter you mention. Indeed I had never heard of the instrument before," others say "I have never seen one," "I have never seen its use mentioned in standard works on diseases of the Nervous System." "I can get no definite information as to the practical use of the Calorimeter of Lombard," &c.

So much for the acceptance in the medical profession of such applications of Chinese artillery, to dazzle the eyes of the laity. It reminds one of the array of ophthalmoscopes in McFarland's case by the same individual, and his claims to diagnose conditions of the brain by appearances, which the best ophthalmoscopists pronounce utterly insufficient and unreliable.

So much, too, for the imputation upon the intelligence of the medical profession in North Carolina, in a sneer at the physicians for the want of intimate acquaintance with an instrument, which the first physicians of the Union have not adopted in their practice, nor can obtain any trustworthy information concerning; which no "standard

work" refers to, and which in various cases has not even been "heard of" by them.

So far as Dr. Hammond's connection with the Johnston Will Case is concerned, as hereinbefore stated, he has no reply to make to the charge (of which the evidence is in my possession, from the original notes of counsel taken on the trial) that his intention until foiled in the attempt, was to accept \$500 as a fee for his expert evidence, and \$2,500 more if he should succeed in establishing the insanity of Mr. Johnston, in his function of ostensible expert. To this there is no word of denial, and his answer is a claim to the friendship and sympathy of the gentlemen named in that trial as counsel and judge, which I have authority for stating, they have no knowledge of. Let him dare to deny one jot or tittle of his misconduct in the Johnston Will Case, and the public shall receive ample testimony of its truth from impartial and unperjured lips.

The only portion of the "Second Open Letter" which is fit for perusal, as containing subject matter of a scientific character, is a part touching epilepsy, and especially the citation of authorities to show that epileptics may be sometimes responsible for their actions. I am not aware that such a proposition has been denied, in any paper of mine.

The true point in issue, as will be seen by the reader, on referring to pages 21 and 22, is the fact that Dr. W. A. Hammond testified on the same trial, in reply to questions of similar meaning, with directly conflicting answers; first in such manner as to condemn, and secondly as to acquit the poor wretch; after, an interview with the opposing counsel.

This new attempt to deceive would be ludicrous if it were not so wicked. He has given authorities to show that A is true and B is untrue, concerning his answers, but tries to hide the fact that he afterwards told the jury that B was true, and A untrue. It is, in fact, the very *gravamen* of the crime, that he swears on one trial to the truth of certain assumed scientific dicta, and on another trial to their falsity, as may best serve the side whose money he seeks. Alas for truth and honor!

My conjectures in regard to the hidden genesis of epilepsy in the

pamphlet from which he quotes, and attempts to ridicule by the introduction of a colloquy with a vulgar friend, have at least the merit, unappreciable by him, of not being *copied from Continental writers, ancient or modern.*

To those who live in distant States, it may be proper to observe that the assertion on page 16, of the "Second Open Letter" of my "fraudulent election to the Legislature by means of wholesale ballot-box stuffing, using for this purpose the statements of Capt. John T. Deweese," is worthy of an author, already convicted by a competent court of falsehood.

The only sessions of the Legislature of which I have ever been a member were those of the General Assembly of 1862, when I was elected (while lying wounded in a hospital at Richmond,) on the same ticket with the late beloved and venerated Hon. Robert B. Gilliam, of Granville, and in 1864, when I was re-elected almost without opposition, on the ticket with Col. J. S. Amis. These events occurred some time before the advent of John T. Deweese on North Carolina soil, and of course a number of years previous to the sudden departure of Mr. Deweese from the United States House of Representatives for corruption. They occurred, in fact, at about the same period, when Dr. Hammond was being tried on the other side of Mason and Dixon's line, for fraud, falsehood, and other conduct unbecoming an officer and a gentleman, for which he was cashiered on the order of the President of the United States.

It is to be regretted that the *scavengers* whom this man employs in North Carolina, or elsewhere, cannot even be true to their *master*, and supply of their stores of slander that which has, at least, some semblance of foundation.

The empty boast is made that a suit for libel will be instituted against Dr. John P. Gray for the publication of my paper upon "True and False Experts." Dr. Gray, it will be understood, edits the *American Journal of Insanity*, the first authority on that subject in the Union, in which my paper appeared. The editor is, and has been for many years Superintendent of the New York State Insane Asylum at Utica, which justly ranks among the most celebrated institutions in the world.

The profession will recognize the justice of the proposition which I make, that suit for libel should rather have been entered in North Carolina, where the damage, if any, has been inflicted. Ample bond can be given to secure the payment of all that an honest jury of North Carolinians would award to whatever injury the unsullied purity of his character has sustained. Would that their verdict could likewise heal the wrongs he has inflicted upon his honored profession, upon medical science, upon the unfortunates he has *duped*, and saddest of all, those he has *doomed*.

That such members of the profession as have not been favored with a copy of the "Second Open Letter" may know from the portrait of his moral character which he unconsciously paints as he writes, what sort of being it is that was once known among gentlemen as Dr. Hammond, I compel myself to quote a paragraph, while I profoundly apologize for the necessity of sullyng the fair face of the page.

His chaste pen declares,

"A distempered and snarling cur has nobler mental and moral qualities than you; the vibrio that wriggles in decomposing filth is higher in the scale of existence; the foul bird that defecates in its own nest is less odious; the wretch who, actuated by perverted instincts, revels in nastiness and abominations, is not so execrable; the monster who insults the mother who bore him is more entitled to human sympathy."

Every pure minded and honorable reader will concede that the creature capable of such a paragraph has already descended to a depth which no epithet in our tongue can fitly describe, and safely placed himself where it would be folly to pursue, even to award him the honor of contempt.

Convicted from his own mouth, condemned by the impartial tribunal of the medical profession, he will be surely sentenced by the common voice of society.

His threat to pursue me as long as I live has no terrors for me, but I cannot afford to follow his example, as I have higher and better aspirations than to devote my life to the notice of a blackguard.

May the hollow echoes from the grave of a ruined and dead reputation serve at least to warn any flatterer or follower, who may be tempted for the sake of gain, to pursue the wicked career which Providence has mercifully arrested.

E. G.

